

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ROBERT V. TOWNES, IV, individually and	)	Civil Action No. 04-1488
on behalf of all persons similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
TRANSUNION, LLC and TRUELINK, INC.,	)	
	)	
Defendants.	)	

**PLAINTIFF'S MEMORANDUM IN SUPPORT  
OF MOTION FOR APPOINTMENT OF INTERIM COUNSEL**

Plaintiff, Robert V. Townes, IV, hereby moves for an order appointing his counsel, the firms Milberg Weiss Bershad & Schulman LLP ("Milberg Weiss") and Pope, McGlamry, Kilpatrick, Morrison & Norwood, LLP ("Pope McGlamry"), as interim counsel under Rule 23(g)(2)(A) of the Federal Rules of Civil Procedure. Both Pope McGlamry and Milberg Weiss are experienced in complex and class action litigation. The Court should appoint the two firms as interim counsel in order to further the purposes of Rule 23(g)(2)(A), serve the interests of judicial economy, and designate counsel to represent the interests of the proposed class in the forum selected by Defendants in the "Terms of Use" document that governs the services at issue in this litigation.

**INTRODUCTION**

This case was filed on December 1, 2004. It is a proposed class action on behalf of a nationwide class of persons who purchased services from Defendants, which Plaintiff asserts are "credit repair organizations" that operate in violation of the consumer protection provisions of the federal Credit Repair Organizations Act ("CROA"), 15 U.S.C. § 1679 *et seq.* The proposed class consists of all persons who, at any time after five years prior to the filing of this action,

have purchased any “consumer” or “personal” service from Defendants and who (a) paid in advance before such service was provided or fully performed; (b) did not receive the disclosures described in 15 U.S.C. § 1679c; (c) did not receive a written contract with terms as described in 15 U.S.C. § 1679d; or (d) did not receive a cancellation form and other information described in 15 U.S.C. § 1679e. Defendants answered on January 21, 2005.

The action was filed in this Court because Defendants chose this forum. The “Terms of Use,” which purports to govern all disputes arising out of Plaintiff’s and other consumers’ use of Defendants’ websites and the services sold and provided thereon, provides that the exclusive venue for proceedings shall be the state and federal courts of New Castle County, Delaware. To avoid collateral, and probably pointless, litigation on forum selection, Plaintiff has brought his action here.

On or about February 7, 2005, plaintiff Mark L. Rosser filed a very similar CROA action in the United States District Court for the Northern District of Alabama, naming TransUnion and TrueLink as defendants. *Rosser v. TrueLink, Inc.*, Case No. 2:05-cv-00245-LSC (Judge L. Scott Coogler). Neither Pope McGlamry nor Milberg Weiss represents Mr. Rosser.

The present motion seeks appointment of the law firms representing Plaintiff in this action (*Townes*) as interim counsel to lead the litigation.

### **ARGUMENT**

#### **INTERIM COUNSEL SHOULD BE APPOINTED AS REQUESTED**

Rule 23(g)(2)(A) of the Federal Rules of Civil Procedure provides that the court “may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.” The commentary to Rule 23 notes that the appointment of interim counsel is helpful where there is uncertainty as to the leadership of the case and who will file the class certification motion. *See* Advisory Committee Notes, 2003 Amendments.

The pendency of *Rosser v. TrueLink, Inc.* raises these uncertainties, particularly if Defendants were to seek to enforce the forum selection provision and bring that case to this Court. Designation of the counsel whose clients decided to litigate in this forum as interim counsel will establish leadership, unify plaintiffs' approach to class certification, avoid duplication or conflict, and ensure appropriate and competent representation for the proposed class.

The Milberg Weiss and Pope McGlamry law firms have ample experience in consumer class actions and have the resources necessary to prosecute this litigation effectively. Further information about the firms' qualifications is contained in the firm resumes, attached as Exhibits A and B hereto. The two firms originated these cases and drafted the original complaint on which the claims are based. Prior to and since filing this action, Pope McGlamry and Milberg Weiss expended significant resources including time, effort and funds, to investigate and prepare the case. They have filed in the forums designated in the Terms of Use, which Defendants contend binds the parties. This is the first action of this type filed against TransUnion and TrueLink. In addition, the two firms are prosecuting similar claims against other entities. *See, e.g., Slack v. Fair Isaac Corp.*, C-05-0257 (N.D. Cal.); *Hillis v. Equifax Consumer Services, Inc.*, Case No. 1:04-CV-3400 (N.D. Ga.).

There is no reported case law yet applying Rule 23(g)(2)(A). However, the appointment of the two firms as requested would satisfy the evident purpose of the rule, as these firms have demonstrated expertise in the subject-matter and have taken the initiative in originating the claims. Furthermore, granting the motion would minimize the likelihood of competing lawsuits inefficiently squandering the resources of the federal courts and jeopardizing adequate representation of the proposed classes.

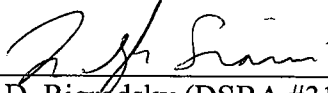
**CONCLUSION**

For the foregoing reasons, this Court should designate the Milberg Weiss and Pope, McGlamry law firms as interim counsel for these actions.

Dated: March 10, 2005

Respectfully submitted,

**MILBERG WEISS BERSHAD  
& SCHULMAN LLP**

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*Plaintiffs' Proposed Interim Counsel*

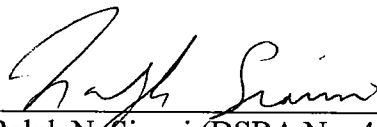
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**CERTIFICATE OF SERVICE**

I, Ralph N. Sianni, hereby certify that on March 10, 2005, two true and correct copies of PLAINTIFFS MOTION FOR THE APPOINTMENT OF INTERIM COUNSEL, PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR APPOINTMENT OF INTERIM COUNSEL, and the [PROPOSED] INTERIM COUNSEL ORDER, were served upon the following counsel of record by hand delivery:

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